

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:CTM:SF:POSTF-109096-02

KGCroke (LMSB)

date: February 15, 2002

to: Office of Chief Counsel, Barbara Johnson, Room 4510

from: CC:LM:CTM:SF

subject:

NSAR Review

Exam has requested advice concerning the above taxpayer on the issues described below. Field Counsel's advice follows.

ISSUES

1. On the Form 872 Consent to Extend the Time to Assess Tax for [REDACTED], on line 1 for the "kind of tax," do I enter "income" or do I need to add something relating to personal holding company tax?

2. On the Form 872, for the name of the taxpayer, do I put "[REDACTED]," or do I need to list all the group members?

3. Since the personal holding company tax is calculated for each group member separately because it is an ineligible affiliated group, do I use a single Form 872 for the consolidated group or do I need separate Forms 872 for each member of the group that has the personal holding company tax?

4. Is the statute of limitations on assessment of the personal holding company tax for the [REDACTED] year six years? Can the Service assess the personal holding company tax in addition to the tax stemming from the NOL carryback?

FACTS

The facts presented are as follows:

[REDACTED] is the common parent of a group of affiliated corporations that elected to file consolidated

returns. Exam is auditing the consolidated tax returns for taxable years ended December 31, [REDACTED] through December 31, [REDACTED]. The [REDACTED] year return was originally opened solely because of a net operating loss carryback from [REDACTED].

During the audit, Exam found significant personal holding company income for some members of the consolidated group for all the years except [REDACTED]. Only the consolidated return for [REDACTED], however, had the personal holding company box checked and included the required schedule (Schedule PH) setting forth the items of gross income and adjusted gross income described in section 543 (personal holding company income).

In [REDACTED], [REDACTED], [REDACTED], and [REDACTED], the [REDACTED] consolidated group was an ineligible affiliated group as defined in I.R.C. § 542(b)(2) because some members of the group derived [REDACTED] percent or more of their adjusted ordinary gross income for the tax year from sources outside the group, and [REDACTED] percent or more of such outside income consists of personal holding company income. Accordingly, it may not use its consolidated gross income and consolidated personal holding company income to determine the liability of the group or any member thereof for personal holding company tax. Treas. Reg. § 1.542-4.

The taxpayer and Exam desire to extend the statute of limitations on assessment for the [REDACTED] year. The statute of limitations on assessment for the [REDACTED] year has expired except with respect to personal holding company tax, which is discussed below.

#### DISCUSSION

##### Issue 1.

On the Form 872 Consent to Extend the Time to Assess Tax for [REDACTED], on line 1 for the "kind of tax," do I enter "income" or do I need to add something relating to personal holding company tax?

##### Answer.

Just enter "income." It covers personal holding company tax.

**Issue 2.**

On the Form 872, for the name of the taxpayer, do I put "[REDACTED]," or do I need to list all the group members?

**Answer.**

Treas. Reg. § 1.1502-77(a) provides that the common parent, with certain exceptions not relevant here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each such subsidiary. Thus, the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group.

Accordingly, the taxpayer's name on the Form 872 should be captioned as follows:

[REDACTED] (EIN [REDACTED])  
[REDACTED] common parent agent of the [REDACTED]  
(EIN [REDACTED]) [REDACTED] consolidated  
group.\*

There should be an asterisk following "group." At the bottom of the Form 872 add:

\* This is with respect to the consolidated tax of the [REDACTED] consolidated group for the taxable year ended December 31, [REDACTED].

**Issue 3.**

Since the personal holding company tax is calculated for each group member separately because it is an ineligible affiliated group, do I use a single Form 872 for the consolidated group or do I need separate Forms 872 for each member of the group that has the personal holding company tax?

**Answer.**

Use a single Form 872 for the consolidated group. See rationale for Answer to Issue 2. While each member may be

required to file a separate Schedule PH, those schedules are filed with the consolidated return and the personal holding company tax is reported on the consolidated return (Schedule J, line 9). I.R.C. § 6501(f).

**Issue 4.**

Is the statute of limitations on assessment of the personal holding company tax for the [REDACTED] year six years? Can the Service assess the personal holding company tax in addition to the tax stemming from the NOL carryback?

**Answer.**

With certain exceptions, the amount of any tax imposed by the Code shall be assessed within three years after the return was filed. I.R.C. § 6501(a). If a corporation which is a personal holding company for any taxable year fails to file with its return for such year a schedule setting forth the items of gross income described in section 543(a) received by the corporation during such year and other required information, the personal holding company tax for such year may be assessed, or a proceeding in court for the collection thereof may be begun without assessment, at any time within 6 years after the return for such year was filed. I.R.C. § 6501(f); Treas. Reg. § 301.6501(f)-1.

The Taxpayer did not file a Schedule PH (or other schedule with the information required by I.R.C. § 6501(f)) with its [REDACTED] consolidated return. Accordingly, the six year statute of limitations applies and the service can assess the personal holding company tax anytime before the expiration of that period.

If you have any questions or comments, please call the undersigned.

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